

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ 176-3151
Administrative Law Judge Division
April 21, 2005

R E S O L U T I O N

RESOLUTION ALJ 176-3151. Ratification of preliminary determinations of category for proceedings initiated by application. The preliminary determinations are pursuant to Article 2.5, Rules 4, and 6.1 of the Commission's Rules of Practice and Procedure. (See also Rule 63.2(c) regarding notice of assignment.)

The Commission's rules and procedures which implement the requirements of Senate Bill (SB) 960 (Leonard, ch. 96-0856) are, for the most part, found in Article 2.5 of our Rules of Practice and Procedure. The rules and procedures were adopted by the Commission in D.97-11-021, which describes more fully the background to the development of these rules. Rule 4 describes the formal proceedings to which the SB 960 rules (Article 2.5) apply. Rule 6.1 requires the Commission to preliminarily determine a proceeding's category, whether the proceeding requires a hearing, and designate an Assigned Commissioner and Administrative Law Judge. Rule 6.1(a) states that the preliminary determination of category is not appealable but shall be confirmed or changed by Assigned Commissioner's ruling. Unless and until a preliminary determination is changed by such ruling, the preliminary determination of category governs the applicability of the other reforms that SB 960 requires. Rule 63.2 provides for petitioning the Commission to reassign a proceeding to another administrative law judge. Rule 63.2(c) establishes the time for filing such a petition. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

The Categories

SB 960 makes sweeping changes in many aspects of the Commission's practices in an effort to improve the quality and timeliness of Commission decision making. It creates three categories of proceedings: adjudicatory, ratesetting, and quasi-legislative. The

applicability of many of the changes it requires depends upon the category assigned to the proceeding. For example, the ex parte rules which apply differ if the proceeding is categorized as adjudicatory rather than quasi-legislative. The Legislature defined each of these procedural categories in Section 7 of SB 960. Consistent with these definitions, the rules provide that:

“‘Adjudicatory’ proceedings are: (1) enforcement investigations into possible violations of any provision of statutory law or order or rule of the Commission; and (2) complaints against regulated entities, including those complaints that challenge the accuracy of a bill, but excluding those complaints that challenge the reasonableness of rates or charges, past, present, or future.

“‘Ratesetting’ proceedings are proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities). ‘Ratesetting’ proceedings include complaints that challenge the reasonableness of rates or charges, past, present, or future. For purposes of this Article, other proceedings may be categorized as ratesetting as described in Rule 6.1(c).

“‘Quasi-legislative’ proceedings are proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry.” (Rules 5(b), 5(c), and 5(d).)

Mixed or Unclear Category Proceedings

For a proceeding that may fall into more than one category, the rules allow parties to recommend that the Commission pick the most suitable category, or to recommend dividing the subject matter of the proceeding into different phases or one or more new proceedings, each with its own category. The rules provide that a proceeding that does not clearly fit into *any* of SB 960’s defined categories will be conducted under the rules applicable to the ratesetting category. As such a proceeding matures, the Commission may determine that the rules applicable to one of the other categories, or some hybrid of those rules, would be better suited to the proceeding.

As stated in D.97-06-071, ratesetting proceedings typically involve a mix of policymaking and factfinding relating to a particular public utility. Because proceedings that do not clearly fall within the adjudicatory or quasi-legislative categories likewise typically involve a mix of policymaking and factfinding, the ratesetting procedures are, in general, preferable for those proceedings.

Next Steps

As stated above, this preliminary determination of category is not appealable. Once interested parties have had an opportunity to respond to the initiating party's proposed category, the preliminary determination shall be confirmed or changed by Assigned Commissioner's Ruling pursuant to Rule 6(a)(3). This Assigned Commissioner Ruling may be appealed to the full Commission pursuant to Rule 6.4(a). Parties have 10 days after the ruling is mailed to appeal. Responses to the appeal are allowed under Rule 6.4(b), and must be filed and served not later than 15 days after the ruling is mailed. The full Commission will consider the appeal.

Any party, or person or entity declaring an intention to become a party is entitled to petition for reassignment of the proceeding to another Administrative Law Judge, as described in Rule 63.2. Such a petition must be filed no later than 10 days after notice of the assignment. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

Conclusion

The Commission has reviewed the initial pleading of the utility applicants listed in the attached schedule and has made a preliminary determination of category and need for hearing, consistent with the requirements and definitions of Article 2.5 of its rules.

IT IS ORDERED that each proceeding listed in the attached schedule is preliminarily categorized, and the need for a hearing is noted.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on April 21, 2005, the following Commissioners voting favorably thereon:

/s/ STEVE LARSON

STEVE LARSON
Executive Director

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
Commissioners

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3151 (4/21/05)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A05-03-025 SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E), for Approval of its Methodology for allocating its AB1X Generation Revenue Shortfall.	Ratesetting	Ratesetting	NO
A05-03-026 SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E), for Approval of Advanced Metering Infrastructure Deployment Strategy and Cost Recovery Mechanism.	Ratesetting	Ratesetting	YES
A05-03-027 SOUTHERN CALIFORNIA EDISON COMPANY, for a Commission decision authorizing amortization of the current undercollection in the Energy Resource Recovery Account through generation rates adopted in D05-03-006.	Ratesetting	Ratesetting	NO
A05-03-028 STRATEGIC TELECOM, LLC, for registration as an interexchange carrier telephone corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
A05-04-004 SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E), for a Commission finding that its procurement- related and other operations for the record period January 1 through December 31, 2004 complied with its adopted Procurement Plan; for Verification of its entries in the Energy Resource Recovery Account and other Regulatory Accounts; for Recovery of a Nuclear Unit Incentive Reward of \$12.6 Million; and for Recovery of \$6.7 Million recorded in the Electric Energy Transaction Administration Memorandum Account.	Ratesetting	Ratesetting	YES
A05-04-008 CLIFTON WU AND AARON W. CHAN, for authorization to transfer all of the issued and outstanding shares of Advanced Airporter, Inc. (PSC -8267) from Clifton Wu to Aaron W. Chan, pursuant to Section 854, California Public Utilities Code.	Ratesetting	Ratesetting	NO
A05-04-009 CITY OF OAKLEY, for Authority to construct the Laurel Road Overhead in the City of Oakley, County of Contra Costa, State of California.	Ratesetting	Ratesetting	NO

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3151 (4/21/05)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A05-04-010 TEX-LINK COMMUNICATIONS, INC., for a Certificate of Public Convenience and Necessity to provide Facilities-Based and Resold Local Exchange Services within the local Service Territories of Pacific Bell Telephone Company, Verizon California, Inc., Surewest Telephone, and Citizens Telecommunications Company of California, Inc., and to provide Facilities-Based and Resold Interexchange Service throughout California.	Ratesetting	Ratesetting	NO
A05-04-011 PACIFIC GAS AND ELECTRIC COMPANY, for authorization pursuant to Public Utilities Code Section 851 to grant easement for the installation, operation, maintenance, and use of domestic water wells.	Ratesetting	Ratesetting	NO
A05-04-012 STAR & CRESCENT BOAT COMPANY, dba SAN DIEGO HARBOR EXCURSION, for rate relief and a general passenger fare increase on its vessel common carrier service on San Diego Bay between the City of Coronado and the City of San Diego.	Ratesetting	Ratesetting	NO
A05-04-014 WEST COAST GAS COMPANY, to revise its gas rates and tariffs.	Ratesetting	Ratesetting	YES
A05-04-015 SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E), for a certificate of public convenience and necessity concerning the Devers-Palo Verde No. 2 Transmission Line Project.	Ratesetting	Ratesetting	YES
A05-04-017 IBFA ACQUISITION COMPANY, LLC, for a certificate of public convenience and necessity to provide limited facilities-based and resold competitive local exchange and interexchange services in the State of California.	Ratesetting	Ratesetting	NO